

### Contact Lens Issue Gaining Visibility

Nicole Duran

#### ROLL CALL

Rep. Richard Burr (R-N.C.) is pushing legislation that would give people who wear contacts better access to cheap lenses, but he is not exactly seeing eye to eye with optometrists and ophthalmologists on the matter.

The bill, the Fairness to Contact Lens Consumers Act, seeks to boost competition in the marketplace by requiring eye doctors to provide written scripts to their patients. That move would allow consumers to shop around for a cheaper price, rather than buying lenses through their doctor or optometrist.

At a hearing on the matter last week, House Energy and Commerce Chairman Billy Tauzin (R-La.) charged that doctors and optometrists who write contact lens prescriptions have an inherent conflict of interest because they also sell the product that they prescribe. "What this means is third-party sellers are forced to ask the eye doctors, their competitors, for permission to make a sale," he said. "This sets up a classic conflict of interest that robs the consumer of the ability to shop competitively for the best price," Tauzin concluded.

He noted that the Federal Trade Commission enacted a rule 25 years ago that addressed the same problem for eyeglasses, but the regulator failed to include contact lenses.

Since then, consumers have complained about eye doctors who refuse to release prescriptions unless patients first purchase contact lenses from them.

Several states' attorneys general accused the American Optometric Association of conspiring and engaging in anti-competitive behavior. That suit was settled.

"Eyeglass-wearers have had the right to their eyeglass prescriptions since 1978," Burr, who is running for the Senate, said in his opening statement. "As a contact-lens wearer, I would like to ensure that my constituents and I have that same right starting in 2003."

At last week's House hearing, a spokesman for the bill's most vocal skeptic, the American

Optometric Association, said the trade group does not oppose requiring its members to release prescriptions. But the trade group made it clear that it has concerns with the legislation.

"The primary issue for the AOA and its members is not where patients purchase replacement lenses," the group's past president J. Pat Cummings said.

"It is ... to assure that the process for verifying the prescription ... provides the doctor with all the pertinent patient information required, so that the doctor may properly and efficiently respond to the request and ... that lenses are provided to patients only when the prescription has ... been positively verified."

This issue of verification has become a sticking point. There are two kinds: "passive," meaning that if a doctor does not respond to a seller, such as 1-800 Contacts Inc., within a certain time frame the company can sell the lenses; or "active," meaning lenses cannot be sold until the professional who wrote the prescription confirms the script.

While the AOA supports active verification, others, such as 1-800 Contacts, prefer passive. The legislation, meanwhile, is silent on the issue.

That is a problem for some Democrats. Rep. Pete Stark (D-Calif.) co-sponsored similar legislation with Burr in the previous Congress, but he is not completely satisfied with the new version of the bill.

"I am not a co-sponsor of this bill because I'm concerned that it lacks any enforcement mechanism or any mechanism to provide for [passive] verification," Stark said in a statement.

**Rep. Jan Schakowsky** (D-Ill.), ranking member of the Energy and Commerce subcommittee on commerce, trade and consumer protection, also voiced concern at the hearing.

She said the bill needs a clear verification process, and it also needs to ensure that any penalties for noncompliance are "balanced."

**Schakowsky** asked whether it is fair for a doctor to be given only eight hours, for example, to respond to a release request before being penalized.

The bill calls upon the Federal Trade Commission to study the issue of verification and make a recommendation, but J. Howard Beales, speaking on behalf of the agency, said the FTC does not have the expertise to make that call and would prefer that Congress settle the issue.

"If the bill directly and specifically addressed the issue of an acceptable verification system, consumers also would receive the bill's benefits more quickly than if the commission first had to compile information about various systems, analyze the costs and benefits of these systems, and decide which systems are acceptable," he said.

AOA's chief lobbyist, Jeffrey Mays, was happy after the hearing.

"We were pleased that a number of Members showed up at the hearing to express concern that contact lens prescriptions be treated appropriately," he said.

"We support release and verification [of prescriptions]," he added, but "we wouldn't support passive verification."

While just one Member - Rep. John Boozman (R-Ark.), the House's only optometrist - has said he might not support the bill thus far, others may come to object as the bill moves forward, according to a Republican staffer familiar with the issue.

Selling contact lenses "is their bread and butter," the GOP staffer said of optometrists.

"Every district has eye doctors and optometrists," a Democratic committee staffer added, noting that they could put pressure on Members to not support the final bill.

So far this election cycle, the American Optometric Association's political action committee has doled out more than \$100,000 to Members of Congress - \$55,600 to Republicans and \$50,750 to Democrats. Of the total, \$29,500 has gone to members of the Energy and Commerce Committee or House leaders. The group has also given \$15,000 to leadership PACs, including \$5,000 to Speaker Dennis Hastert's (R-Ill.) Keep Our Majority PAC.

The American Academy of Ophthalmology has also been generous this cycle, giving Republican candidates \$62,500 and Democrats \$26,000.

So far, that group has remained neutral on the bill.

"We're following it but we haven't taken an actual position [yet ]," said Steve Miller, the group's spokesman.

However, Miller said his group would like to see an active verification system included in the bill.

Boozman, the optometrist, said he agrees that active verification is the way to go.

"That's the safest thing," he said, noting that without it, inaccurate prescriptions may get filled.

By the time the bill is ready for markup - which should be by month's end - Boozman said he believes the verification issue will be resolved.

"I really feel like it's going to get fixed" to everyone's satisfaction, he said.